

Number: **202031006**
Release Date: 7/31/2020
Index Number: 355.01-01

Third Party Communication: None
Date of Communication: Not Applicable

Telephone Number:

In Re:

Distributing =

Controlled 1 =

Controlled 2 =

Business D =

Shareholder A =

Shareholder B =

Shareholder C =

Year 1 =

Asset 1 =

Asset 2 =

Asset 3 =

Asset 4 =

Asset 5 =

Dear :

This letter replies to your letter dated October 25, 2019 that requested rulings on certain federal income tax consequences of a proposed transaction. Additional information was submitted in subsequent letters.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B 283, regarding one or more "Covered Transactions" under Section 355 and section 368 of the Internal Revenue Code. This office expresses no opinion as to any issue not specifically addressed by the rulings below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

This office has made no determination regarding whether any of the Distributions (as defined below) (i) satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b); are used principally as a device to distribute the earnings and profits of any or all of the distributing corporation or either controlled corporation (see sections 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iii) are part of a plan or related transactions pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation, or any predecessor or successor of the distributing corporation or the controlled corporation, within the meaning of Treas. Reg. § 1.355-8 (see sections 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7)).

Summary of the Facts

Distributing is a State X corporation engaged in Business D. Distributing has a single class of stock owned in equal shares by shareholders A, B, and C, who are siblings. The shareholders inherited the stock of Distributing after the death of their father in Year 1. Distributing owns Asset 1, Asset 2, Asset 3, Asset 4, and Asset 5 (the "Assets"), all of which are income-producing assets.

Since Year 1, Shareholder C has served as President of Distributing, Shareholder B as Treasurer and Secretary, and Shareholder A as Vice President. All three have served on Distributing's Board of Directors. Since Year 1 all three have performed active and substantial management and operational functions with respect to the Assets, and

each shareholder has managed a specific Asset or Assets, subject to oversight by the Board of Directors.

As a result of disagreements over business strategy and future plans for Distributing's business, shareholders A, B, and C have decided to divide Distributing into three separately owned corporations and go their separate ways. In order to achieve this separation, the following transactions are proposed:

- (i) Two new corporations, Controlled 1 and Controlled 2, will be formed.
- (ii) Distributing will contribute Asset 1 to Controlled 1 in exchange for all the outstanding stock of Controlled 1 (the Controlled 1 Contribution).
- (iii) Distributing will transfer Asset 2 and Asset 3 to Controlled 2 in exchange for all the outstanding stock of Controlled 2 (the Controlled 2 Contribution).
- (iv) Distributing will distribute all the stock of Controlled 1 to Shareholder A in exchange for all the Distributing stock owned by Shareholder A (the Controlled 1 Split-Off).
- (v) Distributing will distribute all the stock of Controlled 2 to Shareholder B in exchange for all the Distributing stock owned by Shareholder B (the Controlled 2 Split-Off).

After the proposed transactions, all the stock of Distributing will be owned by Shareholder C. Distributing will retain ownership of Asset 4 and Asset 5.

Representations

Except as otherwise set forth below, Distributing makes all the representations in section 3 of the Appendix to Rev. Proc. 2017-52, 2017-41 I.R.B 283, in the form set forth therein. For purposes of these representations, references to "Controlled" refer to Controlled 1 regarding the Controlled 1 Split-off and Controlled 2 regarding the Controlled 2 Split-Off.

Distributing makes the following alternative representations set forth in section 3 of the Appendix to Rev. Proc. 2017-52:

Representations 3(a), 8(a), 11(a), 15(a), 22(a), 31(a), 41(b)

Rulings

Based on the information submitted and the representations set forth above, we rule as follows regarding the Covered Transactions:

Reorganizations

1. The Controlled 1 Contribution, followed by the Controlled 1 Split-Off; and the Controlled 2 Contribution, followed by the Controlled 2 Split-Off, will each qualify as a reorganization within the meaning of Section 368(a)(1)(D) of the Code. Distributing, Controlled 1, and Controlled 2 will each be a “party to a reorganization” within the meaning of section 368(b).

Controlled 1 Split-Off

2. No gain or loss will be recognized by Distributing on the Controlled 1 Contribution (sections 357(a) and 361(a)).
3. No gain or loss will be recognized by Controlled 1 on the Controlled 1 Contribution (section 1032(a)).
4. The basis of each asset received by Controlled 1 in the Controlled 1 Contribution will equal the basis of the asset in the hands of Distributing immediately before the Controlled 1 Contribution (section 362(b)).
5. The holding period in each asset received by Controlled 1 in the Controlled 1 Contribution will include the period in which Distributing held that asset (section 1223(2)).
6. No gain or loss will be recognized by Distributing on the Controlled 1 Split-Off (Section 361(c)).
7. No gain or loss will be recognized by (and no income will otherwise be included in the income of) Shareholder A in the Controlled 1 Split-Off (section 355(a)(1)).
8. Shareholder A’s basis in the Controlled 1 shares received in the Controlled 1 Split-Off will equal the basis of the Distributing shares exchanged for the Controlled 1 stock in the Controlled 1 Split-Off (section 358 and Treas. Reg. § 1.358-2(a)(2)).
9. Shareholder A’s holding period in the Controlled 1 shares received in the Controlled 1 Split-Off will include the holding period of the Distributing shares surrendered in the Controlled 1 Split-Off (section 1223(1)).
10. As provided in section 312(h), proper allocation of earnings and profits between Distributing and Controlled 1 will be made under Treas. Reg. § 1.312-10(a).

Controlled 2 Split-Off

11. No gain or loss will be recognized by Distributing on the Controlled 2 Contribution (sections 357(a) and 361(a)).
12. No gain or loss will be recognized by Controlled 2 on the Controlled 2 Contribution (section 1032(a)).
13. The basis of each asset received by Controlled 2 in the Controlled 2 Contribution will equal the basis of the asset in the hands of Distributing immediately before the Controlled 2 Contribution (section 362(b)).
14. The holding period in each asset received by Controlled 2 in the Controlled 2 Contribution will include the period in which Distributing held that asset (section 1223(2)).
15. No gain or loss will be recognized by Distributing on the Controlled 2 Split-Off (Section 361(c)).
16. No gain or loss will be recognized by (and no income will otherwise be included in the income of) Shareholder B in the Controlled 2 Split-Off (section 355(a)(1)).
17. Shareholder B's basis in the Controlled 2 shares received in the Controlled 2 Split-Off will equal the basis of the Distributing shares exchanged for the Controlled 2 stock in the Controlled 2 Split-Off (section 358 and Treas. Reg. § 1.358-2(a)(2)).
18. Shareholder B's holding period in the Controlled 2 shares received in the Controlled 2 Split-Off will include the holding period of the Distributing shares surrendered in the Controlled 2 Split-Off (section 1223(1)).
19. As provided in section 312(h), proper allocation of earnings and profits between Distributing and Controlled 2 will be made under Treas. Reg. § 1.312-10(a).

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the proposed transactions under any provision of the Code or regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the proposed transaction that is not specifically addressed by this letter.

Procedural Statements

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it cannot be used or cited as precedent.

A copy of this ruling letter should be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transaction covered by this ruling letter is consummated. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number (PLR-126603-19) of this letter ruling.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Corporate)

cc: